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DELAWARE COMMUNITY REINVESTMENT ACTION COUNCIL, INC.

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*Our mission is "to ensure equal access to credit and capital for the under-served populations and communities throughout Delaware through Education, Outreach, Advocacy, and Legislation."*

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**Founded in 1987**

March 24, 2008

Jennifer J. Johnson  
Secretary

Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551  
Via email: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

**RE: Regulation Z, Docket No. R-1305**

Dear Secretary Johnson:

On behalf of the Delaware Community Reinvestment Action Council, Inc., DCRAC, thank you for the opportunity to comment on the proposed Regulation Z.

This proposal is an important first step to end unfair and deceptive practices on high-cost loans. We are facing this foreclosure crisis in large part because irresponsible lending was allowed unchecked as a result of inadequate consumer protection and safety and soundness standards.

In Delaware, insurers are refusing to offer Private Mortgage Insurance in all of Kent County--tagged as "distressed or declining market." Liquidity in the housing market is at a standstill.

Our foreclosure crisis is dangerously disastrous. While our February 2008 numbers were better than the country only increasing 42%, we are concerned. In New Castle County we saw a 50% increase in foreclosure filing compared to the same time last year. In Kent County, we faced an increase of 22% and in Sussex County an increase of 33%.

In January 2008, Delaware had 402 foreclosure filings. In February 2008,



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our numbers declined to 337. This does not mean that we are out of crisis. It just means that housing counselors are working harder and buying time.

While the proposal is commendable, critical and long overdue, it does not fully contain irresponsible lending practices. We urge you to address these areas addressed below.

**Ability-to-Repay:** It remains our position that all loans should be based on the ability to pay standard. We support the proposal's ability-to-repay standard. But, we are concerned with the following provisions:

1. The proposal essentially permits the practice of limited documented lending to continue. This is unacceptable.
2. The lender is required to assure the borrower's ability to repay only during the first seven years when the mortgage could be a 30 or 40 year loan. This too is unacceptable.
3. When the regulators such as yourself and credit rating agencies could not identify patterns and practices, how do you expect the borrower to prove this in a suit against an irresponsible lender?

**Escrows Required:** The proposal recognizes the importance of requiring escrows yet, it permits a lender to allow a borrower to opt-out of escrow requirements after twelve months. This is unacceptable.

It remains our position that all loans should include escrows for insurance and taxes. Very few homeowners would choose to pay and actually be able to pay taxes and insurance on their own. The vast majority of homeowners cannot.

Many clients of ours would not be in or near foreclosure if lenders escrowed Taxes and insurance. At year-end, when insurance and taxes come due, the lender pays taxes and places forced placed high cost insurance. The stage is set for a foreclosure in the near future.

**Prepayment Penalties:** The five-year ban is too long. A majority of our clients are unable to refinance out of an exotic or toxic mortgage product because of the high cost of prepayment penalty. They are stuck.

In our comments earlier we shared with you that if the rationale for retaining prepayment penalty is liquidity, we submit that liquidity comes from prudence, responsible lending, and a level playing field. Leveling the playing field requires strong consumer protections for all borrowers against all lenders.

Despite our strong position that prepayment penalties should be banned altogether, we are willing to compromise for a two to three year limit. The prepayment penalty should also be limited to a reasonable dollar amount so that the penalty does not pose a barrier preventing a

refinance into a lower cost loan.

We agree that prepayment penalties must cease before the initial rate expires on an adjustable rate mortgage (ARM) loan. We urge you to require prepayment penalties to cease 90 days before the expiration of the initial rate, not 60 days as proposed.

**Yield Spread Premiums:** Yield spread premiums (YSPs) must be banned. How can there be a benefit to the borrower who is paying a premium for a high cost loan? Good disclosures do not prevent bad loans.

**Protections for All Loans:** We support the proposed protections against appraisal fraud, servicing abuses, and deceptive advertising. We also support the proposed requirement that good faith estimates (GFE) of loan costs for refinance and other non-home purchase loans be supplied to borrowers before payment of application fees.

We urge you to add protections in the area of servicing. It is crucial that you require reasonable loss mitigation efforts before foreclosure proceedings commence. Protections against appraisal fraud must require a new appraisal and an adjusted loan amount in cases when the original appraisal was inflated.

**Non-Traditional Prime Loans are not Covered:** These protections must apply to all other non-traditional prime loans as well.

**Liability for Secondary Market:** Most subprime loans are sold to investors, the limited liability for investors provides no effective redress to borrowers. At the very least, you should broaden liability and allow individual borrowers to seek redress, if not class action lawsuits.

Inadequate consumer protection regulation has contributed to the foreclosure crisis and the current economic uncertainty. We urge you to significantly strengthen and implement your proposal. Thank you for this opportunity to provide comments on this important matter. Please do not hesitate to contact me at 302-654-5024 if you have any questions.

Sincerely,

Rashmi Rangan  
Executive Director

cc: National Community Reinvestment Coalition